

## **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed December 28, 2006. Through this response, claims 1, 7, and 16 have been amended, and claims 2, 8, and 17 have been canceled without prejudice, waiver, or disclaimer. Reconsideration and allowance of the application and pending claims 1, 3-7, 9-13, 15, 16, 18-22, 24, 26, and 27 are respectfully requested.

### **I. Claim Rejections - 35 U.S.C. § 103(a)**

#### **A. Rejection of Claims**

Claims 1-13, 15-22, 24, and 26-27 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Petruchik et al.* ("Petruchik," U.S. Pat. No. 5,619,738) in view of *Ikeda, et al.* ("Ikeda," U.S. Pat. No. 6,297,874). Applicant respectfully submits that the amendments to the claims have rendered the rejection moot. Further, Applicant respectfully submits that claims 1, 3-7, 9-13, 15, 16, 18-22, 24, 26, and 27 are allowable over the art of record.

#### **B. Discussion of the Rejection**

The U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness according to the factual inquiries expressed in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). The four factual inquiries, also expressed in MPEP 2100-116, are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

Applicant respectfully submits that a *prima facie* case of obviousness is not established using the art of record.

**Independent Claim 1**

Claim 1 recites (with emphasis added):

1. An apparatus for capturing digital images, comprising:  
an image sensor including a plurality of image capture elements, each of the image capture elements configured to capture image data; an input element for communicating a print size to the apparatus; **responsive to entry of the print size, means for enabling fewer than all of the plurality of image capture elements to capture the image data;** and  
means for matching image capture elements corresponding to the fewer than all of the plurality of image capture elements with an aspect ratio corresponding to the print size.

Applicant respectfully submits that the rejection has been rendered moot in view of the above-described claim amendments. Additionally, Applicant respectfully submits that *Petruchik* in view of *Ikeda* fails to disclose, teach, or suggest at least the above-emphasized claim features. Accordingly, Applicant respectfully submits that claim 1 is allowable over the art of record.

Because independent claim 1 is allowable over the art of record, dependent claims 3 through 6 are allowable as a matter of law for at least the reason that the dependent claims 3 through 6 contain all elements of their respective base claim.

See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

### Independent Claim 7

Claim 7 recites (with emphasis added):

7. A method for adapting a print size to a captured image in a digital image capture device, the method comprising the steps of:
  - providing an image sensor including a plurality of image capture elements;
  - enabling fewer than all of the plurality of image capture elements to capture image sensor data;*
  - matching the fewer than all of the plurality of image capture elements of the image sensor with an aspect ratio corresponding to a selected print size; and
  - presenting the captured image sensor data corresponding to the selected print size to a user of the image capture device.

Applicant respectfully submits that the rejection has been rendered moot in view of the above-described claim amendments. Additionally, Applicant respectfully submits that *Petruchik* in view of *Ikeda* fails to disclose, teach, or suggest at least the above-emphasized claim features. Accordingly, Applicant respectfully submits that claim 7 is allowable over the art of record.

Because independent claim 7 is allowable over the art of record, dependent claims 9-13, 15, and 26 are allowable as a matter of law.

### Independent Claim 16

Claim 16 recites (with emphasis added):

16. A computer readable medium having a program for adapting a print size to a captured image in a digital image capture device, the program including logic for performing the steps of:
  - enabling fewer than all of a plurality of image capture elements of an image sensor to capture image data;*
  - matching the fewer than all of the plurality of image capture elements of the image sensor with an aspect ratio corresponding to a selected print size; and
  - presenting the captured image sensor data corresponding to the selected print size to a user of the image capture device.

Applicant respectfully submits that the rejection has been rendered moot in view of the above-described claim amendments. Additionally, Applicant respectfully submits that *Petruchik* in view of *Ikeda* fails to disclose, teach, or suggest at least the above-emphasized claim features. Accordingly, Applicant respectfully submits that claim 16 is allowable over the art of record.

Because independent claim 16 is allowable over the art of record, dependent claims 18-22, 24, and 27 are allowable as a matter of law.

In summary, it is Applicant's position that a *prima facie* for obviousness is not made against Applicant's claims. Therefore, it is respectfully submitted that each of these claims is patentable over the art of record and that the rejection of these claims should be withdrawn.

## **II. Canceled Claims**

As identified above, claims 2, 8, and 17 have been canceled from the application through this Response without prejudice, waiver, or disclaimer. Applicant reserves the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

**CONCLUSION**

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

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